

**Letter of Findings: 65-20200409
Oversize/Overweight Penalty
For the Year 2019**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Motor Carrier failed to meet its burden of proving the Department's assessment was incorrect.

ISSUE

I. Oversize/Overweight Penalty - Assessment.

Authority: IC § 6-8.1-5-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-6-2; IC § 9-20-6-8; IC § 9-20-6-9; IC § 9-20-3-2; IC § 9-20-6-11; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 289 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that it is entitled to an abatement of the Department's assessment of an "oversize/overweight" civil penalty on the ground that it was operating under a permit.

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier. In September of 2019 one of Taxpayer's drivers was stopped by the Indiana State Police ("ISP") on Interstate 65. The ISP found that Taxpayer's vehicle and load of wall panels exceeded the permissible width. At the time of the citation, the driver noted that Taxpayer had a permit, but the driver did not have it in his possession. Based on a report provided by the ISP, the Indiana Department of Revenue ("Department") issued a \$500 civil penalty. Taxpayer disagreed with the penalty and submitted a protest to that effect. Along with its protest letter Taxpayer submitted a Protest Submission Form indicating its desire to waive the hearing process. Accordingly, this Letter of Findings is based on information available to the Department, including information provided by Taxpayer. Additional facts will be provided as necessary.

I. Oversize/Overweight Penalty - Assessment.

DISCUSSION

Taxpayer protests the imposition of the \$500 penalty on the ground that it was operating under a permit and there was no signage or other such notification on the Interstate that size and/or weight restrictions were in effect.

As a threshold issue, it is a taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Unless otherwise provided, "a person, including a transport operator, may not operate or move upon a highway a vehicle or combinations of vehicles of a size or weight exceeding the limitations provided in this article." IC § 9-20-1-1. Further, under IC § 9-20-1-2, "[A]n owner of . . . a vehicle . . . may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

Regarding width limitations, IC § 9-20-3-2 states:

- (a) The maximum width limitation, except width exclusive devices in accordance with 23 CFR 658.15 or United States Public Law 98-17, is eight (8) feet, six (6) inches.
- (b) The width limits in subsection (a) do not apply to the following:
 - (1) Machinery or equipment used in utility construction or maintenance if the violation is the result of oversize tires.
 - (2) A recreational vehicle with appurtenances that make the vehicle wider than the maximum width limitation described in subsection (a), if:
 - (A) the appurtenances do not extend beyond the width of the manufacturer installed exterior rear view mirrors of the recreational vehicle or the motor vehicle providing motive power; and
 - (B) the manufacturer installed exterior rear view mirrors extend to only the distance necessary to afford the required field of view for the vehicle.

There are times when it is appropriate to allow vehicles and loads which exceed the limitations outlined in IC § 9-20-3-2 to use Indiana roads. The appropriate authority "may, upon proper application in writing and good cause shown, grant a permit for transporting heavy vehicles and loads or other objects not conforming to this article . . . if the . . . authority finds that other traffic will not be seriously affected and the highway or bridge will not be seriously damaged." IC § 9-20-6-2. These permits may also "designate the route to be traversed and contain any other restrictions or conditions necessary for the proper protection of the traffic, highway, or bridge." IC § 9-20-6-8. Finally, a permit shall: "(1) be carried in or on the vehicle or other object to which the permit refers; and (2) be open to inspection by a police officer." IC § 9-20-6-11.

Though a permit holder may transport a vehicle/load which exceeds the limitations of IC § 9-20-3-2, the permit does not give the holder free-reign. As stated in IC § 9-20-6-9, "[a] permit issued under this article may not be construed as protection to or as a defense by a holder of a permit if the restrictions and rules to which the permit is subject are violated." If a permit holder violates the terms of their permit, the holder is "subject to a civil penalty of not more than five hundred dollars (\$500) for the first violation and not more than one thousand dollars (\$1,000) for each subsequent violation." IC § 9-20-18-14.5(b).

Taxpayer had an Oversize Annual Permit in effect at the time of the citation. The permit, issued by the Department, allows Taxpayer to carry loads with a gross weight of 80,000 pounds, maximum height of 13 feet, 6 inches, a maximum width of 12 feet, 4 inches, and a maximum length of 110 feet. The permit allowed Taxpayer to travel "[o]ver all state roads open to traffic except I-65 and I-70 inside I-465 and Indiana Toll Road." According to the citation, the driver was pulled over on I-65 northbound between mile-marker 50 and mile-marker 64, which is near Seymour, Indiana. The ISP officer pulled the driver over as he was under the understanding that loads were limited to 12 feet wide on this stretch of I-65. Taxpayer's load exceeded 12 feet. In the citation notes, the officer states that the driver did not have the permit with him. As a result, the Department assessed Taxpayer with a \$500 penalty.

Taxpayer acknowledged the majority of the facts outlined in the citation, but did argue that their driver had the permit in his possession, but the ISP officer "destroyed our driver['s] permit and let him go without a ticket." As noted above, the burden of proof is on Taxpayer to establish that the proposed assessment is incorrect. IC § 6-8.1-5-1(c). Whether or not Taxpayer had a permit with the driver, or where on I-65 the stop occurred, Taxpayer bears the burden of proving the proposed assessment wrong. Taxpayer has not proven the assessment at issue is wrong. Therefore, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is respectfully denied.

January 28, 2021

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